

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Garth W. Gobeli
SERIAL NO.: 08/873,999
FILED: June 12, 1997
FOR: METHOD AND DEVICE FOR GLUCOSE CONCENTRATION MEASUREMENT
WITH SPECIAL ATTENTION TO BLOOD GLUCOSE DETERMINATIONS

DECLARATION OF ALAN J. LESZINSKE

I, Alan J. Leszinske, make the following declaration:

1. I am the President and majority shareholder of TecMed, Inc. (hereinafter "TecMed") of 5012 Copper Boulevard, NE, Albuquerque, New Mexico 87108.

2. Exhibit A is a copy of a "Technology Purchase Agreement" dated August 28, 1995 between TecMed and Garth W. Gobeli (who is named as the sole inventor of the above-identified patent application).

3. The Technology Purchase Agreement of Exhibit A obligates Mr. Gobeli to convey to TecMed:

"All rights to the designs, procedures, processes, patents, and other intellectual properties related to the development and production of Endoscopic Surgical Instruments, Artificial Colorization of Laproscopic Endoscopic images, Portable Spectrophotometer(s) and

Optical Blood Sugar measurement devices and methodologies, together with the associated products resident with Gobeli at the perfection of this agreement."

4. After the "Technology Purchase Agreement" was executed on August 28, 1995, Mr. Gobeli was in charge of developing for TecMed a portable system for blood sugar level measurement, which is disclosed in detail in the above-identified patent application.

5. Mr. Gobeli cooperated fully with TecMed and its patent attorney Mr. Charles R. Hoffman in preparing the above-identified patent application.

6. TecMed to date has spent more than \$800,000.00 on developing the invention described in the above-identified patent application by Mr. Gobeli. TecMed is actively developing and improving the blood glucose measurement system disclosed in the above-identified patent application and intends to introduce a system that incorporates the invention to the marketplace as soon as possible.

7. I made several personal requests to Mr. Gobeli that he sign a Declaration and Power of Attorney for the above-identified patent application, and he refused to comply.

8. Then I asked Roy A. Anuskevicz Jr., an attorney who represents TecMed, to present a Declaration and Power of Attorney for the above-identified patent application to Mr. Gobeli and ask him to sign it.

9. TecMed has had considerable difficulty dealing with severe alcohol abuse by Mr. Gobeli; the alcohol abuse eventually resulted in poor work by Mr. Gobeli and in Mr. Gobeli physically threatening TecMed employees, which caused severe office disruption and loss of staff by TecMed. TecMed also has attempted to support Mr. Gobeli in obtaining professional counseling for his alcoholism, which Mr. Gobeli refused.

10. The undersigned further declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Further deponent sayeth not.

March 6, 1998
Date



Alan J. Leszanske

TECHNOLOGY PURCHASE AGREEMENT

This Purchase Agreement (the Agreement) is entered into as of the 28th day of August, 1995, by and between TecMed, Inc. a New Mexico Corporation, ("TecMed") and Garth W. Gobeli Ph.D., a private individual ("Gobeli").

RECITALS:

WHEREAS, Gobeli is a private individual with knowledge and experience in Endoscopic Surgical Instruments, and viewing devices, non-invasive optical measurements and manipulations, spectrophotometer designs products and technology; and

WHEREAS, Gobeli desires to sell this expertise on an exclusive basis to TecMed pursuant to the below described terms and conditions; and

WHEREAS, TecMed desires to buy the expertise of Gobeli on an exclusive basis to develop these technologies to the economic advantage of TecMed pursuant to the below described terms and conditions as set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TecMed and Gobeli agree as follows:

1. **Offer to Provide Technology and Experience.** Gobeli shall provide to TecMed the following:
 - (a) All rights to the designs, procedures, processes, patents, and other intellectual properties related to the development and production of Endoscopic Surgical Instruments, Artificial Colorization of Laproscopic Endoscopic Images, Portable Spectrophotometer(s) and Optical Blood Sugar Measurement devices and methodologies, together with the associated products resident with Gobeli at the perfection of this agreement.
2. **Term.** This agreement shall have a term of five (5) years and shall be automatically renewed for successive five (5) year periods unless one of the parties elects not to renew by notifying the other party not less than (30) days prior to the end of a five (5) year term.
3. **Payment for Technology and Experience.** TecMed grants a royalty on annual net sales of all based products deriving from Gobeli designs as follows:
 - (a) Five percent (5%) of the first one million dollars (\$1,000,000.00) in United States currency.
 - (b) Four percent (4%) of the second one million dollars (\$1,000,000.00) in United States currency.
 - (c) Two percent (2%) of all net sales in excess of two million dollars (\$2,000,000.00) in United States currency.

This royalty is cumulative in perpetuity and net sales is defined as the gross selling price of service or product less any and all cost associated with the development or acquisition of the sale, including general business overhead. No royalty shall be paid or shall accumulate for credit until such time as TecMed is profitable.

4. **Representations and Warranties.** Gobeli and TecMed hereby represent and warrant as follows:

- (a) The parties to this agreement recognize that some earlier preliminary work has been done by Gobeli which has been published and resided in the public domain, and Gobeli asserts that the design of the above indicated products and the processes associated therewith shall not infringe in any way upon any design or process patented or proprietary to Gobeli that has been previously or otherwise assigned.
- (b) The parties assert that there are no claims, counterclaims, offsets, or encumbrances which exist which would hinder any ownership, transfer, or development of the technology(s) upon transfer, under this Agreement.
- (c) Gobeli and TecMed have full power and authority to execute and deliver this Agreement and any documents required hereunder and to consummate the transactions contemplated hereby.
- (d) The parties to this agreement recognize that all technology, including processes, that are developed by Gobeli for or with TecMed during the term of this Agreement shall become the permanent property of TecMed.

Any breach of the representations and warranties of the parties as above described will result in full accountability by the party which creates such breach thereof.

5. **Indemnification.** Gobeli hereby agrees to indemnify, hold harmless, and defend TecMed, its officers, employees, attorneys, agents, representatives, and assigns from and against any and all claims, losses, damages, penalties, causes of action, multiple damages, punitive damages, and other consequences whatsoever (including, but not limited to, cost and expenses of litigation) that may directly or indirectly arise from or be related to, or in whole or in part be caused or contributed to by any act or omission of Gobeli or his agents, contractors, or representatives, including, but not limited to, performance of this Agreement.

10. **Miscellaneous.**

- (a) **Survival of Covenants, Representations and Warranties and Indemnities.** The covenants, representations, warranties, and indemnities of the parties hereto under this Agreement shall survive the termination of this agreement.
- (b) **Notices.** Any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally or mailed, by certified or registered mail, postage prepaid, and shall be deemed given when so delivered personally or, if mailed, two (2) days after the date of mailing, as follows:

If to TecMed:

TecMed, Incorporated
5012 Copper Blvd. N.E.
Albuquerque, New Mexico 87108
Attn: Alan J. Leszinske - President

If to Gobeli:

Garth W. Gobeli Ph.D.
1004 Warm Sands Trail S.E.
Albuquerque, New Mexico 87123
Attn: Garth W. Gobeli, Ph.D.

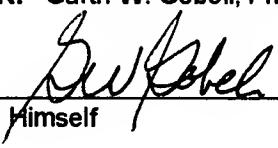
- (c) **Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
- (d) **Applicable Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of New Mexico and the parties agree that the venue of any legal action or arbitrations involving this agreement or any transactions concerning it shall be in Albuquerque, New Mexico.
- (e) **Severability.** Any provision of this Agreement which may be prohibited by law or otherwise held invalid shall be ineffective only to the extent of such prohibition or invalidity and shall not invalidate or otherwise render ineffective any of the remaining provisions of this Agreement.
- (f) **Attorneys' Fees.** In the event of litigation in connection with this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and other costs of litigation.
- (g) **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer upon any person not a party to this Agreement, any rights or remedies under or by reason of this Agreement or the other documents executed in connection therewith.
- (h) **Time is of the Essence.** Time is of the essence in the performance of each and every obligation hereunder.
- (i) **Entire Agreement.** This Agreement constitutes the entire agreement between each of the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements between the parties with regard to such subject matter, and no change in, addition to, or modification of this Agreement shall be valid unless set forth in writing executed by the parties hereto.

EXECUTED as of the date and year first set forth above.

BUYER: TecMed, Incorporated

By: 
Alan J. Leszinske - President

SELLER: Garth W. Gobeli, Ph.D.

By: 
Garth W. Gobeli
Himself



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

EXAMINER:

APPLICANT: Garth W. Gobeli

SERIAL NO.: 08/873,999

FILED: June 12, 1997

FOR: METHOD AND DEVICE FOR GLUCOSE CONCENTRATION
MEASUREMENT WITH SPECIAL ATTENTION TO BLOOD
GLUCOSE DETERMINATIONS

DECLARATION OF ROY A. ANUSKEWICZ, JR.

I, Roy A. Anuskewicz, Jr., make the following declaration:

1. I am an attorney licensed to practice in the state of New Mexico, and I have represented TecMed, Incorporated of 5012 Cooper Boulevard NE, Albuquerque, New Mexico 87108 since approximately August 1, 1995.
2. Exhibit A is a copy of a letter dated November 25, 1997 from me to Mr. Gobeli's wife Mrs. Jean Gobeli, sent to her at Mr. Gobeli's address by first class mail. A Declaration and Power of Attorney and an Assignment, both for execution by Garth W. Gobeli, were enclosed. As the letter explains, I had heard that Mr. Gobeli had been hospitalized and decided to send the letter to his wife at the same address.
3. Exhibit B is a copy of a letter dated December 15, 1997 from me to Mr. Gobeli

referring to the letter of Exhibit A, again asking that he sign the documents sent along with the letter of Exhibit A (i.e., the Declaration and Power of Attorney and Assignment for the above-identified application).

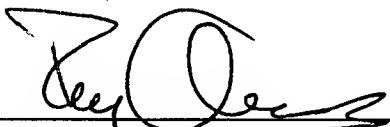
4. Exhibit C is a copy of a letter sent by me by certified mail dated January 7, 1998 demanding that Mr. Gobeli sign the Declaration enclosed with my letter of November 25, 1997 (Exhibit A). Although my January 7, 1998 letter (Exhibit C) does not so state, new copies of the Declaration and Power of Attorney and Assignment were enclosed.
5. Exhibit D is a copy of the certified mail receipt for the letter of Exhibit B, signed by Mr. Gobeli's wife Jean Gobeli on January 8, 1998.
6. Exhibit E is a copy of notes I made in a telephone conversation on January 8, 1998 with Mr. Gobeli, wherein I again asked him to sign the Declaration and Power of Attorney, and he stated he would not sign them. During that conversation Mr. Gobeli indicated that he was looking at the Declaration and Power of Attorney and the Assignment.

The undersigned further declares that all statements made herein of his own knowledge are true and that all statements made on information are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001

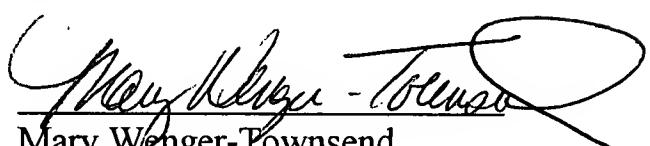
of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Further deponent sayeth not.

3/4/98
March 4, 1998


Roy A. Anuskewicz, Jr.

The foregoing was SUBSCRIBED and SWORN to before me this 4th day of March 1998 by Roy A. Anuskewicz, Jr.


Mary Wenger-Townsend
Notary Public

My Commission Expires: 2/3/2001

Roy A. Anuskewicz, Jr.
Attorney at Law

November 25, 1997

Mrs. Jean Gobeli
1004 Warm Sands Trail SE
Albuquerque, NM 87123

Re: Patent matters relating to TecMed, Inc.

Dear Mrs. Gobeli:

I heard that Dr. Gobeli had been hospitalized. I hope he has a speedy recovery. For that reason I am mailing patent documents to you. They need to be signed by Dr. Gobeli. You are probably the best person to determine when is the best time for his review and signature of these documents. Timeliness is a serious concern regarding these documents. The patent process is slow and we need to have these signed as soon as possible. Would you please review the same and let me know when you believe it would be reasonable for Dr. Gobeli to sign the same.

If you have any questions, you may contact either my office or Charles R. Hoffman, the patent attorney in Phoenix. I have enclosed a letter regarding these documents from Mr. Hoffman which includes his telephone number.

Thank you very much for your assistance in this matter.

Sincerely,


Roy A. Anuskewicz, Jr.

RAA/mwt

Roy A. Anuskewicz, Jr.
Attorney at Law

December 15, 1997

Garth W. Gobeli, PhD.
1004 Warm Sands Trail SE
Albuquerque, NM 87123

Re: Patent matters relating to Tecmed Inc.

Dear Dr. Gobeli:

On November 25, 1997, in care of your wife, I mailed to you patent documents which require your signature. These documents were prepared by Charles R. Hoffman. These documents need your immediate attention. I do not want to slow down the process or lose the patent for failure to sign these documents. Would you please sign them and forward them to my office as soon as possible. I will need to know no later than Friday, December 19, 1997. If there is a problem would you please contact me. I have enclosed a copy for your convenience.

Sincerely,



Roy A. Anuskewicz, Jr.

RAA/mwt
encl.

Roy A. Anuskewicz, Jr.
Attorney at Law

January 7, 1998

Via Certified Mail and First Class Mail

Garth W. Gobeli, Ph.D.
1004 Warm Sands Trail SE
Albuquerque, NM 87123

Re: Patent matters relating to TecMed Inc.

Dear Dr. Gobeli:

I wrote you on November 25, 1997 and on December 15, 1997 regarding patent documents necessary for pursuing the patent application of TecMed Inc. regarding the device for glucose concentration measurement. It is further my understanding that you spoke personally with Alan Leszinske on December 23, 1997 regarding the patent documents. Demand is once again made for your signature on the documents regarding the above described patent application including the Declaration and Power of Attorney and the Assignment documents. Time is of the essence. Irreparable damage can be done to TecMed Inc. if these documents are not signed and returned to me forthwith. You indicated in your telephone conversation on December 23, 1997 with Mr. Leszinske that you would be recontacting him. To date you have not done so. It is my opinion that your failure to sign these documents in a timely fashion constitutes a breach of contract on your behalf. Once again if you have any questions, I will be more than happy to answer any questions.

Neither TecMed Inc., the board of directors, Mr. Leszinske or I wish to engage in litigation regarding these and related matters. We will not, however, let you sabotage the glucose monitoring device and other products due to your failure to perform as you agreed. If your response is not received by January 10, 1997, I have been engaged to take appropriate action by the court through complaints for declaratory relief, injunctive relief and appointment of a special master to sign the patent documents. We will be requesting damages from you as well as costs and attorneys fees. I will recommend to TecMed Inc., CxLv and Contract Funding that they also take legal action for advances made to you pursuant to the royalty agreement and other agreements due to your breach of contract. I have also been

Garth W. Gobeli, Ph.D.

January 7, 1998

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advised that you have used the resources of Contract Funding, CxLv and TecMed Inc. to develop other products including the scanning pen for which you are attempting to obtain patents. If we are forced to litigate the patent matter we will also litigate all claims of my clients in the matters. Suit would also be brought against your wife since it is my understanding that she claims an interest in other products you have developed.

Please sign the documents and return them to me so this matter can proceed and we can work out our other differences without the Court process.

Please contact me with your response.

Sincerely,



Roy A. Anuskewicz, Jr.

RAA/mwt

cc: TecMed, Inc.
Contract Funding Inc.
CxLv